

of this section is to be determined by subtracting the present value of all interests in the transferred property other than the unitrust interest from the fair market value of the transferred property.

(3) *Other transfers.* The present value of an interest not described in paragraph (d)(2) of this section is to be determined under § 25.2512-5.

(4) *Special computations.* If the interest transferred is such that its present value is to be determined by a special computation, a request for a special factor, accompanied by a statement of the date of birth and sex of each individual the duration of whose life may affect the value of the interest, and by copies of the relevant instruments, may be submitted by the donor to the Commissioner who may, if conditions permit, supply the factor requested. If the Commissioner furnishes the factor, a copy of the letter supplying the factor must be attached to the tax return in which the deduction is claimed. If the Commissioner does not furnish the factor, the claim for deduction must be supported by a full statement of the computation of the present value made in accordance with the principles set forth in this paragraph.

(e) *Effective date.* This section applies only to gifts made after July 31, 1969. In addition, the rule in paragraphs (c)(2)(vi)(a) and (vii)(a) of this section that guaranteed annuity interests or unitrust interests, respectively, may be payable for a specified term of years or for the life or lives of only certain individuals applies to transfers made on or after April 4, 2000. If a transfer is made on or after April 4, 2000, that uses an individual other than one permitted in paragraphs (c)(2)(vi)(a) and (vii)(a) of this section, the interest may be reformed into a lead interest payable for a specified term of years. The term of years is determined by taking the factor for valuing the annuity or unitrust interest for the named individual measuring life and identifying the term of years (rounded up to the next whole year) that corresponds to the equivalent term of years factor for an annuity or unitrust interest. For example, in the case of an annuity interest payable for the life of an individual age 40 at the time of the transfer, assuming

an interest rate of 7.4% under section 7520, the annuity factor from column 1 of Table S(7.4), contained in IRS Publication 1457, Book Aleph, for the life of an individual age 40 is 12.0587 (Publication 1457 is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402). Based on Table B(7.4), contained in Publication 1457, Book Aleph, the factor 12.0587 corresponds to a term of years between 31 and 32 years. Accordingly, the annuity interest must be reformed into an interest payable for a term of 32 years. A judicial reformation must be commenced prior to October 15th of the year following the year in which the transfer is made and must be completed within a reasonable time after it is commenced. A non-judicial reformation is permitted if effective under state law, provided it is completed by the date on which a judicial reformation must be commenced. In the alternative, if a court, in a proceeding that is commenced on or before July 5, 2001, declares any transfer, made on or after April 4, 2000, and on or before March 6, 2001, null and void ab initio, the Internal Revenue Service will treat such transfers in a manner similar to that described in section 2055(e)(3)(J).

[T.D. 7318, 39 FR 25458, July 11, 1974; 39 FR 26154, July 17, 1974, as amended by T.D. 7340, 40 FR 1240, Jan. 7, 1975; T.D. 7955, 49 FR 19998, May 11, 1984; T.D. 7957, 49 FR 20812, May 17, 1984; T.D. 8069, 51 FR 1507, Jan. 14, 1986; 51 FR 5323, Feb. 13, 1986; 51 FR 6319, Feb. 21, 1986; T.D. 8540, 59 FR 30103, 30177, June 10, 1994; T.D. 8630, 60 FR 63919, Dec. 13, 1995; T.D. 8923, 66 FR 1043, Jan. 5, 2001; T.D. 9068, 68 FR 40132, July 7, 2003]

**§ 25.2522(c)-4 Disallowance of double deduction in the case of qualified terminable interest property.**

No deduction is allowed under section 2522 for the transfer of an interest in property if a deduction is taken from the *total amount of gifts* with respect to that property by reason of section 2523(f). See § 25.2523(h)-1.

[T.D. 8522, 59 FR 9658, Mar. 1, 1994]

**§ 25.2522(d)-1 Additional cross references.**

(a) See section 14 of the Wild and Scenic Rivers Act (Pub. L. 90-542, 82

Stat. 918) for provisions relating to the claim and allowance of the value of certain easements as a gift under section 2522.

(b) For treatment of gifts accepted by the Secretary of State or the Secretary of Commerce, for the purpose of organizing and holding an international conference to negotiate a Patent Corporation Treaty, as gifts to or for the use of the United States, see section 3 of Joint Resolution of December 24, 1969 (Pub. L. 91-160, 83 Stat. 443).

(c) For treatment of gifts accepted by the Secretary of the Department of Housing and Urban Development, for the purpose of aiding or facilitating the work of the Department, as gifts to or for the use of the United States, see section 7(k) of the Department of Housing and Urban Development Act (42 U.S.C. 3535), as added by section 905 of Pub. L. 91-609 (84 Stat. 1809).

(d) For treatment of certain property accepted by the Chairman of the Administrative Conference of the United States, for the purpose of aiding and facilitating the work of the Conference, as gifts to the United States, see 5 U.S.C. 575(c)(12), as added by section 1(b) of the Act of October 21, 1972 (Pub. L. 92-526, 86 Stat. 1048).

(e) For treatment of the Board for International Broadcasting as a corporation described in section 2522(a)(2), see section 7 of the Board for International Broadcasting Act of 1973 (Pub. L. 93-129, 87 Stat. 459).

[T.D. 7318, 39 FR 25461, July 11, 1974]

**§ 25.2523(a)-1 Gift to spouse; in general.**

(a) *In general.* In determining the amount of taxable gifts for the calendar quarter (with respect to gifts made after December 31, 1970, and before January 1, 1982), or calendar year (with respect to gifts made before January 1, 1971, or after December 31, 1981), a donor may deduct the value of any property interest transferred by gift to a donee who at the time of the gift is the donor's spouse, except as limited by paragraphs (b) and (c) of this section. See § 25.2502-1(c)(1) for the definition of calendar quarter. This deduction is referred to as the *marital deduction*. In the case of gifts made prior to July 14, 1988, no marital deduction is

allowed with respect to a gift if, at the time of the gift, the donor is a non-resident not a citizen of the United States. Further, in the case of gifts made on or after July 14, 1988, no marital deduction is allowed (regardless of the donor's citizenship or residence) for transfers to a spouse who is not a citizen of the United States at the time of the transfer. However, for certain special rules applicable in the case of estate and gift tax treaties, see section 7815(d)(14) of Public Law 101-239. The donor must submit any evidence necessary to establish the donor's right to the marital deduction.

(b) *"Deductible interests" and "non-deductible interests"*—(1) *In general.* The property interests transferred by a donor to his spouse consist of either transfers with respect to which the marital deduction is authorized (as described in subparagraph (2) of this paragraph) or transfers with respect to which the marital deduction is not authorized (as described in subparagraph (3) of this paragraph). These transfers are referred to in this section and in §§ 25.2523(b)-1 through 25.2523(f)-1 as "deductible interests" and "non-deductible interests", respectively.

(2) *"Deductible interest"*. A property interest transferred by a donor to his spouse is a "deductible interest" if it does not fall within either class of "nondeductible interests" described in subparagraph (3) of this paragraph.

(3) *"Nondeductible interests"*. (i) A property interest transferred by a donor to his spouse which is a "terminable interest", as defined in § 25.2523(b)-1, is a "nondeductible interest" to the extent specified in that section.

(ii) Any property interest transferred by a donor to the donor's spouse is a *nondeductible interest* to the extent it is not required to be included in a gift tax return for a calendar quarter (for gifts made after December 31, 1970, and before January 1, 1982) or calendar year (for gifts made before January 1, 1971, or after December 31, 1981).

(c) *Computation*—(1) *In general.* The amount of the marital deduction depends upon when the interspousal gifts are made, whether the gifts are terminable interests, whether the limitations of § 25.2523(f)-1A (relating to gifts